

REMARKS

Claims 1 – 16 are in the application and have been subject to an election requirement as provided below.

The Examiner requires an election of species under PCT Rule 13.1 regarding the compounds of formula (I). Applicants are required to provisionally elect a species for examination even if with traverse.

To clarify Applicants' initial response, Applicants hereby provisionally elect with traverse to prosecute the compound of formula I' in which R¹ is 2-chloro-pyrid-4-yl; n is 0 (i.e., the four "free" positions in the benzene portion of the indoline ring would be hydrogen); each R_a is hydrogen; p and q are 2, and R⁸ is 4-chloro-cinnamyl. The provisionally elected compound is designated in the specification as III-3, the structure of which is shown in paragraph [0069] on page 17 in combination with Table I on page 7, its mass spectra is displayed in Table 2 on page 51, its preparation is described in Example 1 on pages 59-60, and its biological data is presented in paragraphs [0353]-[0357] on pages 62-63 of the published patent application US 2007/225269 corresponding to the above-identified application.

In the September 30, 2008 communication, the Examiner has pointed out the definition of R⁴ (in claims 1, 5, 9, 10 and 13 on file) and the definition of R^{4a}, R^{4b}, R^{4c} and R^{4d} e.g. in Table I. More specifically, the Examiner suggests that the definition of R⁴ does not include hydrogen, yet R^{4a}, R^{4b}, R^{4c} and R^{4d} are said to be hydrogen.

However, Applicants respectfully submit that there is no conflict because the skilled person looking at the generic structure e.g. of a compound of formula (I) would know that if n = 0 (which is an alternative included in claims 1, 5, 9, 10 and 13) then the four "free" positions in the benzene portion of the indoline ring would be hydrogen. Thus, hydrogen is implicit in the definition of R⁴ in combination with the definition of n (or in other words R⁴ is an optional substituent).

As noted previously, the provisionally elected species compound is encompassed within formula I' including claim 9 as filed. Claims 9 and 12 – 16 read on the elected species. In addition, compositions comprising the compounds of formula I' are specified in claim 11 as amended. The elected species also is included within the scope of formula I in the methods of claims 1 – 8.

Applicants respectfully request that the compounds of formula II, i.e. claim 10, be rejoined in the event that the Examiner holds that claim 9 as filed and claim 11 as amended are allowable, since the compounds of formula II are intermediates used in the synthesis of the compounds of formula I'.

Applicants aver that a complete response to the election requirement of the Examiner has been made and that the instant application and claims are now in condition for examination on their merits and for allowance.

Respectfully submitted,

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